

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANIEL R. BENGTON,

Plaintiff,

v.

CAPITAL ONE BANK,

Defendant.

OPINION & ORDER

13-cv-262-wmc

On March 12, 2013, plaintiff Daniel Bengton proceeding *pro se* filed a complaint against defendant Capital One Bank in the Circuit Court of Dunn, State of Wisconsin. (Dkt. #1-1.) Bengton's complaint purports to raise claims under both state and federal law. The thrust of the complaint appears to be that Bengton paid defendant in full in 2007 but was still subjected to defendant's collections activities for this debt beginning in 2010. On April 18, 2013, Capital One removed this action pursuant to this court's federal question jurisdiction, 28 U.S.C. § 1331. (Dkt. #1.)

Before the court is plaintiff's "Objection to Federal Removal And Demanding a Full and Complete Disclosure and a[n] Open Record Request for all People That Have Received Due Process of Law in the State of Wisconsin in Small Claims Court vs. Capital One et al." (Dkt. #7.) The clerk's office has already responded to Bengton's multiple requests for information in a letter dated April 29, 2013. (Dkt. #8.) The court will treat the remainder of plaintiff's submission as a motion for remand, which the court will deny in part and reserve in part pending the filing of supplemental facts by defendant.

While Bengtson's specific claims are difficult to discern, on its face the complaint raises federal claims, at minimum claims pursuant to the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2.¹ These claims are properly before this federal court pursuant to 28 U.S.C. § 1331, which provides "[t]he district courts shall have original jurisdiction of all civil action arising under the Constitution, laws, or treaties of the United States." As to the remaining state law claims, this court may exercise "supplemental" jurisdiction over them pursuant to 13 U.S.C. § 1367. As such, the court finds subject matter jurisdiction for removal of this action.

Less clear is whether defendant's removal was timely. In the notice of removal, defendant states that Bengtson filed the action on or about March 19, 2013. (Not. of Removal (dkt. #1) ¶ 1.) From the face of the complaint, it is clear, however, that Bengtson filed the action on March 12, 2013. The court assumes that service was not effected until March 19, 2013, which renders defendant's removal on April 18, 2013, timely, if barely so. 28 U.S.C. § 1446(b) ("The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based[.]"). Since Bengtson's challenge to defendant's removal was raised within the 30-day window allowed under § 1447(c), the

¹ Bengtson also asserts a due process claim pursuant to the Fifth or Fourteenth Amendment of the United States Constitution, but whether plaintiff can assert such constitutional violation pursuant to 42 U.S.C. § 1983 against an apparent non state actor, like Capital One, can await another day and another motion.

court will require defendant to clarify when it first *received* the complaint. *See* 28 U.S.C. § 1446(b)(1).

ORDER

IT IS ORDERED that:

- 1) plaintiff Daniel R. Bengtson's objection to federal removal (dkt. #7), which the court construes as a motion to remand, is DENIED with respect to subject matter jurisdiction but is RESERVED as to its timeliness; and
- 2) defendant may have one week to file an affidavit indicating the date Capital One Bank actually received a copy of the complaint.

Entered this 20th day of May, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge